

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	CC Docket No. 92-90

**REPLY COMMENTS OF VERIZON WIRELESS**

Verizon Wireless hereby submits reply comments on the Notice of Proposed Rulemaking (“NPRM”)<sup>1</sup> in the captioned docket. Since parties filed comments in this proceeding, the Federal Trade Commission (“FTC”) adopted a national “Do-Not-Call” list. Verizon Wireless urges the FCC to coordinate with the FTC to adopt a national “Do-Not-Call” list to replace the growing number of varying state lists and requirements. In addition, the FCC should clarify certain other issues related to wireless service telemarketing.

**DISCUSSION**

Citing customer frustration with the pattern of unsolicited telemarketing calls from a multitude of sellers and telemarketers, the FTC last month released its plans to launch a national “Do-Not-Call” registry that limits calls made by or on behalf of sellers of goods and services.<sup>2</sup> Consumers who sign up for this registry will be able to give express agreement to specific sellers

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<sup>1</sup> Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, CG Docket No. 02-278, CC Docket No. 92-90, FCC No. 02-250 (rel. Sept. 19, 2002) (“NPRM”).

<sup>2</sup> Telemarketing Sales Rule, *Final Amended Rule and Accompanying Statement of Basis and Purpose* at 134-37 (“FTC Order”).

to call them, but evidence of such agreements will have to be in writing.<sup>3</sup> The FTC will allow wireless subscribers to include their numbers on the national “Do-Not-Call” list<sup>4</sup> and will also provide an exception from the “Do-Not-Call” list for “established business relationships.”<sup>5</sup> Although the FTC did not preempt state “Do-Not-Call” laws, it left open the possibility that further action would be required if states did not work cooperatively to implement the national list.<sup>6</sup>

Given that the FTC has adopted a national “Do-Not-Call” list, and that there is support in this proceeding for the FCC to act on a similar plan, the Commission should coordinate with the FTC to implement one national “Do-Not-Call” registry. As part of this process, the Commission should adopt rules to make clear that wireless customers can participate in the national “Do-Not-Call” registry and that telemarketers must pay for any necessary technical upgrades for telemarketers to distinguish between wireline and wireless callers given the advent of number pooling and wireless number portability.

**I. THE COMMISSION SHOULD COORDINATE WITH THE FTC TO CREATE A SINGLE, NATIONAL “DO-NOT-CALL” LIST AND SUPERSEDE STATE LISTS**

Many commenters support the implementation of a national “Do-Not-Call” registry.<sup>7</sup> Certain entities, however, oppose the creation of a single, national “Do-Not-Call” list. For

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<sup>3</sup> *Id.* at 134.

<sup>4</sup> *Id.* at 144.

<sup>5</sup> *Id.* at 134.

<sup>6</sup> *Id.* at 158.

<sup>7</sup> *See* Ohio PUC at 2; City of Chicago at 3; New York State Consumer Protection Board at 2; National Consumers League at 7; Californians Against Telephone Solicitation at 1; ACUTA & ACHUO-I at 2; Californians Against Telephone Solicitation at 1; Cendant at 2; Center for Democracy and Technology at 1; City of Chicago at 2; DC Office of the People’s Counsel at 1; Intuit, Inc. at 5; National Association of Attorneys General at 8; National Association of

example, the Colorado Public Utilities Commission is concerned that a national “Do-Not-Call” list would negate the benefits of state “Do-Not-Call” programs and lead to customer confusion.<sup>8</sup> The Oregon Telecommunications Association asks the FCC to exempt states with their own “Do-Not-Call” programs.<sup>9</sup> The National Association of Regulatory Utility Commissioners (“NARUC”) and the National Association of State Utility Consumer Advocates (“NASUCA”) argue in favor of dual State and FCC/FTC “Do-Not-Call” databases.<sup>10</sup> Not all states are against a single, national “Do-Not-Call” list. One state entity, for example, reasons that a national “Do-Not-Call” registry would save costs and reduce customer confusion.<sup>11</sup>

Congress gave the Commission authority to create a national “Do-Not-Call” list and directed the Commission to preempt different state “Do-Not-Call” lists if it adopted a national “Do-Not-Call” approach.<sup>12</sup> The record clearly supports that course of action. Contrary to the claims of those parties that urge the Commission to leave state “Do-Not-Call” laws in tact, dual “Do-Not-Call” lists would be duplicative, costly to maintain, and raise difficult compliance and

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Consumer Agency Administrators at 2; New York State Consumer Protection Board at 2; Privacy Rights Clearinghouse at 1; TX PUC at 2.

<sup>8</sup> Colorado PUC at 3-4.

<sup>9</sup> Oregon Telecommunications Association at 1.

<sup>10</sup> NARUC at 3-5; NASUCA at 10.

<sup>11</sup> Texas PUC at 4.

<sup>12</sup> *See* 47 U.S.C. § 227(e)(2). In addition, Section 2(b) of the Act gives the Commission authority over intrastate matters governed by Section 227. 47 U.S.C. § 152(b).

coordination issues. As many parties suggest,<sup>13</sup> the only way to avoid this result is for the FCC to preempt state telemarketing laws and incorporate current state lists into one FTC/FCC list.<sup>14</sup>

If the FCC does not create a national list despite the compelling reasons to do so, it should work with the FTC to move toward a single, national “Do-Not-Call” system. Although the FTC did not preempt state “Do-Not-Call” laws, it stated its intent to “work with those states that have enacted state ‘do-not-call’ registry laws, as well as the FCC, to articulate requirements and procedures during what it anticipates will be a relatively short transition period leading to *one harmonized ‘do-not-call’ registry system* and a single set of compliance obligations.”<sup>15</sup> The FTC, however, reserved the right to revisit this decision if preemption becomes necessary.<sup>16</sup> By whatever method, the FCC should ensure the same outcome -- a single, national list and a single set of compliance obligations.<sup>17</sup>

## **II. WIRELESS SERVICE IS NOT “RESIDENTIAL,” BUT THE COMMISSION CAN INCLUDE WIRELESS NUMBERS ON THE NATIONAL “DO-NOT-CALL” LIST**

The record demonstrates that there is significant confusion related to telemarketing to wireless phones. For instance, the Ohio PUC states that telemarketing calls to wireless customers should “continue” to be banned, and that these customers should automatically be

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<sup>13</sup> American Bankers Association at 1; American Express at 2; AT&T Wireless at 2; Bank of America at 2; BMO Financial Group at 1; Consumer Bankers Association at 2; Discover Bank at 1; Metris Companies at 2; Sprint at 2 (if FCC decides to adopt national “Do-Not-Call” list, then it must ensure that it replaces state “Do-Not-Call” lists); Telatron Marketing Group, Inc. at 2; Verizon at 2.

<sup>14</sup> See AT&T Wireless at 13.

<sup>15</sup> *FTC Order* at 158 (emphasis added).

<sup>16</sup> *Id.* at 158-59.

<sup>17</sup> Verizon Wireless also supports the FTC’s decision to create an exemption for “established business relationships” from its national “Do-Not-Call” registry, unless the customer has asked to be placed on the seller’s “Do-Not-Call” list. *FTC Order* at 147.

placed on the national “Do-Not-Call” list.<sup>18</sup> Likewise, BellSouth states that there should be “zero tolerance” for telemarketing calls to wireless phones.<sup>19</sup> Other parties recognize that wireless customers should be able to put themselves on national “Do-Not-Call” database but would limit this to where a residential listing exists and the purpose of the call is residential.<sup>20</sup>

The Telephone Consumer Protection Act (“TCPA”)<sup>21</sup> does *not* bar all telemarketing to wireless numbers. Section 227(b)(1)(A) prohibits telemarketing through the use of *autodialing or an artificial or prerecorded voice* to “any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service or any other radio common carrier service, or any service for which the called party is charged for the call.” It does not preclude telemarketing to wireless phones entirely. Neither the statute nor the FCC’s rules prohibit live solicitation to wireless phones. Automatically placing all wireless customers on a national “Do-Not-Call” list would be overly inclusive because it would prevent all telemarketing to wireless customers, not just calls made using autodialing or an artificial or prerecorded voice. This is particularly inappropriate given that some wireless customers have decided to use their wireless phones as their only telephone service.

Although the Commission should not automatically place all wireless customers on the national “Do-Not-Call” list, nothing prevents the FCC from permitting wireless customers to choose to place their wireless numbers on the national “Do-Not-Call” registry. Recognizing that

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<sup>18</sup> Ohio PUC at 21-22.

<sup>19</sup> BellSouth at 7.

<sup>20</sup> New York State Consumer Protection Board at 10.

<sup>21</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227.

consumers are increasingly using their wireless phones in place of landline phone service, the FTC decided to permit wireless customers to enroll in its national “Do-Not-Call” list.<sup>22</sup> The FCC should do the same.

Certain commenters seem to suggest that the FCC cannot include wireless numbers on the national “Do-Not-Call” list unless the FCC characterizes wireless service as a “residential” service.<sup>23</sup> This is neither appropriate nor necessary. Wireless service cannot properly be characterized as residential service.<sup>24</sup> Customers can use their wireless phones virtually anywhere, including at home, at the office, or on the road, and wireless carriers do not offer their services to “residential” or “business” customers, giving the term “residential” service no meaning in the mobile wireless marketplace. In any event, there is no need to categorize wireless service as residential to permit wireless customers to register with the national “Do-Not-Call” list. As both Cingular and AT&T Wireless detail in their comments,<sup>25</sup> nothing prohibits the FCC from authorizing customers to include their wireless numbers in a national “Do-Not-Call” list whether or not wireless numbers are considered “residential.” As Cingular points out,<sup>26</sup> this is the case because the TCPA merely states that a national “Do-Not-Call” list may be

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<sup>22</sup> *FTC Order* at 144.

<sup>23</sup> New York State Consumer Protection Board at 10.

<sup>24</sup> AT&T Wireless at 30; Cingular at 6.

<sup>25</sup> AT&T Wireless at 32; Cingular at 6.

<sup>26</sup> Cingular at 6 n.25.

necessary for residential telephone subscribers, but it does not preclude the FCC from including CMRS numbers on a national list.<sup>27</sup>

### **III. CARRIERS SHOULD NOT BE REQUIRED TO PAY FOR TECHNICAL UPGRADES TO SUPPORT TELEMARKETING**

Verizon Wireless agrees that the statutory prohibition against autodialing and artificial messages to numbers assigned to a wireless service is absolute.<sup>28</sup> Given that it will be more difficult to distinguish between wireline and wireless numbers when routing occurs at the NXX-X level instead of by NXX, the Commission should confirm that telemarketers must have a methodology in place to distinguish between wireless and wireline numbers.

Verizon Wireless agrees with Cingular that carriers should not have to pay for technical upgrades for telemarketers to ensure their compliance with the statutory prohibition against autodialing and artificial messages to wireless handsets,<sup>29</sup> whether this occurs with support from NeuStar's IVR or some other process. The cost of these upgrades must be the responsibility of the telemarketing industry. In addition, any information that NeuStar or other vendors supply to

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<sup>27</sup> While the TCPA states that the Commission may implement a national "Do-Not-Call" list for residential telephone subscribers, if the Commission implements such a list, the TCPA mandates the Commission to "(B) require each common carrier providing *telephone exchange service*, in accordance with regulations prescribed by the Commission, to inform subscribers for *telephone exchange service* of the opportunity to provide notification, in accordance with regulations established under this paragraph, that such subscriber objects to receiving telephone solicitations." 47 U.S.C. § 227(c)(3)(B) (emphasis added). The Commission has determined that wireless carriers offer "telephone exchange service." See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, 11 FCC Rcd 15499, ¶ 1014 (1996).

<sup>28</sup> CTIA at 3.

<sup>29</sup> Cingular at 9.

telemarketers should be limited to whether a particular number is wireless or wireline without identifying the actual service provider.

### **CONCLUSION**

For the foregoing reasons, the Commission should coordinate with the FTC to implement a national "Do-Not-Call" list, permit wireless customers to participate in the national "Do-Not-Call" list, and confirm that carriers should not have to pay for technical upgrades that support telemarketers' compliance with the TCPA.

Respectfully submitted,

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